

**STATE OF WISCONSIN  
SUPREME COURT  
Case No. 99-3297-OA**

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WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION, INC., JOHN CHAREWICZ,  
DAVID MAHONEY, SUSAN ARMAGOST,  
STEVEN URSO AND STATE ENGINEERING  
ASSOCIATION, by its President,  
THOMAS H. MILLER, DAVID BUSCHKOPF,  
ROSS JOHNSON, MELVIN SENSENBRENNER,  
BERNARD KRANZ and THOMAS H. MILLER,

Petitioners,

v.

GEORGE LIGHTBOURN, Secretary of  
the Wisconsin Department of Administration,  
JACK C. VOIGHT, Wisconsin State Treasurer,  
WISCONSIN EDUCATION ASSOCIATION  
COUNCIL, by its President, TERRY CRANEY  
and its Vice-President, STAN JOHNSON, and  
DONALD KRAHN, MARGARET GUERTLER,  
GERALD MARTIN, and PHYLLIS POPE,

Respondents.

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**NOTICE AND MOTION FOR CLARIFICATION  
AND MODIFICATION OF ORDER**

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**PLEASE TAKE NOTICE** that Petitioners, the State Engineering Association, by its President, Thomas H. Miller, and David Buschkopf, Ross Johnson, Melvin Sensenbrenner, Bernard Kranz and Thomas H. Miller (the "SEA Petitioners") hereby move the court for clarification and modification of its Order dated February 10, 2000 in the above-captioned matter. The Grounds for this Motion are as follows:

1. Section 803.09(3), Stats. provides as follows:

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in s. 801.14. The motion shall state the grounds therefor and **shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.** The same procedure shall be followed when a statute gives a right to intervene.

2. In accordance with the requirements of § 803.09(3), Stats., on January 28, 2000, the SEA Petitioners filed with this Court, and served on all parties, its Notice and Motion to Intervene, Memorandum In Support of Motion to Intervene, and Complaint in this matter.

3. By order dated February 10, 2000, this court ordered that "all motions to intervene are granted. The proposed complaint of the Wisconsin Professional Police Association, et al., shall stand as the complaint in this action."

4. The SEA Petitioners understood the court's order as granting the Wisconsin Professional Police Association, et al.'s request to have their petition stand as their complaint – it did not understand the court's order as a decision not to recognize the complaint filed by the SEA Petitioners.

5. That in both written and oral communications, Petitioners Wisconsin Professional Police Association et., al ("WPPA") , and Respondents, the Wisconsin Education Association ("WEAC"), George Lightbourn, Secretary of the Wisconsin Department of Administration, and Jack C. Voight, Wisconsin State Treasurer (collectively, "Administration Respondents"), have either expressed doubt as to the status of the SEA Petitioners' Complaint, or taken the position that the complaint filed by the SEA Petitioners is not part of this action. To date, none of the Respondents have answered the Complaint filed by the SEA Petitioners.

6. That in granting the SEA Petitioners' Motion to Intervene, the SEA Petitioners have become parties to this proceeding with a right to file a complaint setting forth their position in this matter. *See e.g., Castle v. City of Madison*, 89 N.W. 156, 157-58 (1902)(Intervenors are not required to take the case as they find it, but are entitled to plead their own case).

7. That the Complaint filed by the SEA Petitioners contains claims and demands that were not included in the petition filed by the WPPA including, but not

limited to, the following:

- A. The claim in paragraph 38 of the SEA Petitioners' Complaint that "[t]he increase in the spread between assumed salary increases and assumed interest rates results in a decrease in the contributions made to the Fund, thereby posing a potential threat to the actuarial soundness of the Fund. The actuary did not recommend these assumption changes, and the Board did not approve these changes."
- B. The claim in paragraph 44 of the SEA Petitioners' Complaint that the use of the \$4 Billion recognized from the TAA to fund new benefits under AB 495 constitutes a violation of Wis. Const. Art. IV, § 26.
- C. The claim in paragraph 45 the SEA Petitioners' Complaint that AB 495 providing for and funding an increase in the formula multiplier for creditable service prior to January 1, 2000, without providing for state funding for such increased benefits, violates Wis. Const. Art. IV, § 26.
- D. The request in paragraph 3 of the SEA Petitioner's prayer for relief that this Court "[d]eclare that AB 495 providing for and funding an increase in the formula multiplier for creditable service prior to January 1, 2000, but failing to provide state funding for such

increased benefits, violates Wis. Const. Art. IV, § 26."

8. That in addition to the above listed claims, the Administration Defendants have stated that the "way in which the facts are presented, the implications of the facts suggested by SEA, [and] the legal theories and conclusions asserted by SEA" differ from those contained in the Complaint filed by the Employee Trust Funds Board, et al. ("ETF"). These distinctions would also apply to the complaint filed by WPPA because the WPPA Complaint is nearly identical to that filed by the ETF.

9. On February 21, 2000 a conference was held with all parties by Reserve Circuit Court Judge Michael J. Barron. The purpose of the conference was to commence the process of preparing a stipulation of facts, and identifying any disputed facts in accordance with this Court's February 10, 2000 Order. At the conference, questions arose concerning the need to include facts and address factual disputes raised by the SEA Petitioners Complaint that are not raised by the complaint filed by the WPPA. SEA was urged to obtain prompt clarification from this court as to the status of its complaint.

10. Permitting the SEA Petitioners to intervene without allowing them to file a "pleading setting forth the claim ... for which intervention is sought" undermines the right of the SEA Petitioners to participate in this proceeding, and

denies them their statutory rights under § 803.09, Stats.

**WHEREFORE**, the SEA Petitioners now move the court to clarify and modify its Order to provide as follows:

- A. That the Complaint filed by the SEA Petitioners shall stand as a complaint in this matter.
- B. That all Respondents shall answer the complaint filed by the SEA Petitioners forthwith.
- C. That the stipulation of facts, and proceedings concerning the facts in dispute, shall include those facts necessary to address the factual and legal issues raised in the complaint filed by the SEA Petitioners.

Dated this 23<sup>rd</sup> day of February, 2000.

**HAUS, RESNICK AND ROMAN, LLP**

By: \_\_\_\_\_

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Submitted on Behalf of the SEA Petitioners

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